



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Bio-Rad

File: B-239832

Date: June 21, 1990

Daryl Deliman, for the protester.
Douglas P. Larsen, Jr., Esq., Office of the General Counsel,
Department of the Navy, for the agency.
James M. Cunningham, Esq., and John F. Mitchell, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

Protest which was filed with the General Accounting Office more than 10 working days after protester received notice of contracting agency's denial of earlier, identical protest is untimely filed and will not be considered.

DECISION

Bio-Rad protests the determination that its product did not meet the contracting agency's needs and the issuance of a delivery order to Nicolet Analytical Instruments, Inc., by the Naval Regional Contracting Center, San Diego, California, for "FT-IR spectrometers."

We dismiss the protest pursuant to section 21.3(m) of our Bid Protest Regulations (4 C.F.R. Part 21 (1990)) without requiring the submission of a contracting agency report because the Navy has furnished our Office with information demonstrating that the protest is not for consideration. See 4 C.F.R. § 21.3(m).

On March 22, 1990, the Navy wrote Bio-Rad, as a General Services Administration (GSA) Federal Supply Schedule (FSS) contractor, asking the company whether it could meet certain Navy requirements for a spectrometer and, if so, to furnish pricing information under its GSA FSS contract. After reviewing Bio-Rad's response, the Navy determined that Bio-Rad's spectrometer did not meet a resolution requirement based on material included with Bio-Rad's quotation as well as information available from Bio-Rad's GSA contract for the item. Since the Navy determined that Bio-Rad's product did

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not meet its minimum needs, and that Nicolet's did, it issued a delivery order to Nicolet on April 6. On April 11, the Navy's contract specialist notified Bio-Rad that the company's product had been found to be technically unacceptable and that a delivery order had been issued to Nicolet.

By letter of April 12, Bio-Rad informed the Navy that the company considered it had been "unfairly eliminated from the award" and requested a meeting with the Navy to "elucidate the details of our response . . . [and the Navy's specifications] point-by-point." Thereafter, the Navy met with Bio-Rad on April 23 to determine "whether it would be in the Navy's interest to withdraw the order to Nicolet."

Subsequently, Bio-Rad transmitted an "official notice of protest" to the Navy on May 3, in which Bio-Rad stated that it had "responded to repeated inquiries regarding resolution range" and that its spectrometer met "all performance specifications." Additionally, Bio-Rad's May 3 letter of protest insisted that Nicolet's spectrometer did not meet two of the Navy's requirements. By letter of May 4, which Bio-Rad received on May 7,^{1/} the Navy denied Bio-Rad's protest stating that since Bio-Rad's spectrometer did not meet the Navy's resolution requirement and that, as

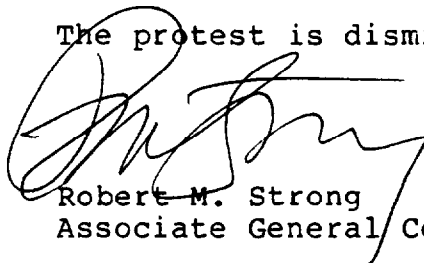
^{1/} Bio-Rad's agency-level protest was signed by its western area sales manager on the company's Cambridge, Massachusetts, letterhead, and the Navy's May 4 reply denying the protest was sent to him at that address. The Navy has provided us with a copy of its certified mail return receipt to show that this letter was received on May 7. Bio-Rad does not deny this, but asserts that the letter was not received by the company's western regional manager at his California office until May 11. Internal delays in processing correspondence within a protesting concern does not toll the timeliness provisions of our Regulations. See Aunyx Mfg. Corp.--Reconsideration, B-208002.2, Aug. 17, 1982, 82-2 CPD ¶ 138. Similarly, Bio-Rad's alleged unfamiliarity with our Regulations does not excuse an untimely filing (A/C Pipe, Inc.--Reconsideration, B-204530.2, Nov. 4, 1981, 81-2 CPD ¶ 386), even where the contracting agency, as alleged by Bio-Rad in its protest, gives erroneous advice (or fails to give advice) as to our Regulations (Miller Gove Travel Assocs.--Request for Recon., B-236069.2, Aug. 16, 1989, 89-2 CPD ¶ 146). Our Regulations are published in the Federal Register, and protesters are charged with constructive notice of their contents. Milwaukee Indus. Clinics, S.C.--Reconsideration, 65 Comp. Gen. 17 (1985), 85-2 CPD ¶ 426.

Nicolet's response did not take an exception to the Navy's specifications, the delivery order was proper.^{2/}

Following the denial of its protest, Bio-Rad filed a May 25 protest with our Office in which Bio-Rad essentially repeated the grounds of its original protest to the Navy concerning the resolution of its spectrometer and the allegedly unacceptable Nicolet quotation.

Section 21.2(a)(3) of our Regulations, provides that if a protest has been filed initially with the contracting agency, any subsequent protest to our Office filed within 10 working days of formal notification of (or actual or constructive knowledge of) initial adverse agency action will be considered--provided the initial protest to the contracting agency was filed timely under sections 21.2(a)(1) and (2) of our Regulations. Assuming, without deciding, that Bio-Rad's initial protest was filed timely with the Navy under our Regulations, it is clear that the company's subsequent protest to our Office (which was received on May 25) was filed more than 10 working days after Bio-Rad's May 7 receipt of the Navy's denial of its protest. Consequently, the protest is untimely filed with our Office and will not be considered. See 4 C.F.R. § 21.2(a)(3).

The protest is dismissed.



Robert M. Strong
Associate General Counsel

^{2/} Bio-Rad states that it could not be sure if the Navy's May 4 letter constituted a final denial of the company's protest. However, the Navy's May 4 letter, on its face, constituted a final denial as the letter plainly stated that the "letter represents the Navy's decision on your protest." Thus, we conclude that Bio-Rad reasonably should have viewed the May 4 letter as a denial of its protest.